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September 24, 2020

United States Environmental Protection Agency
WIFIA Director
WJC-W 6201A
1200 Pennsylvania Avenue NW
Washington, DC 20460

Re: WIFIA Loan Agreement between the United States Environmental Protection Agency and the City of San Diego – Opinion Required From Bond Counsel

Ladies and Gentlemen:

We have acted as special counsel to the City of San Diego (the “Borrower”), a California (the “State”) charter city established and existing pursuant to the Charter of the City of San Diego (the “City Charter”), in connection with the execution and delivery of (i) the WIFIA Loan Agreement, (ii) the WIFIA Note, (iii) the Collateral Agency Agreement and (iv) the MIPA Amendment, each as defined below.

We are providing this opinion to you at the request of the Borrower pursuant to Section 11(a)(iii) of the WIFIA Loan Agreement. Except as otherwise indicated, capitalized terms used and not defined in this opinion and defined in the WIFIA Loan Agreement have the meanings given in the WIFIA Loan Agreement.

In our capacity as such counsel, we have examined originals or copies of those records and documents we considered appropriate, including the following:

- (a) The WIFIA Loan Agreement, dated as of September 24, 2020 (the “WIFIA Loan Agreement”), entered into by and between the Borrower and the United States Environmental Protection Agency, an agency of the United States of America, acting by and through the Administrator of the Environmental Protection Agency (the “WIFIA Lender”);
- (b) The promissory note made by the Borrower to the WIFIA Lender, effective September 24, 2020 (the “WIFIA Note”), regarding the Water System Portion of Pure Water San Diego Program Phase I North City Project;

- (c) The Collateral Agency, Account and Assignment Agreement, dated as of November 14, 2018 (the “Collateral Agency Agreement”), by and among U.S. Bank National Association, a national banking association, as Collateral Agent (the “Collateral Agent”), the Borrower, the San Diego Facilities and Equipment Leasing Corporation (the “Corporation”), the Public Facilities Financing Authority of the City of San Diego (the “Authority”), U.S. Bank National Association, as successor trustee (the “Trustee”) under the Indenture (defined below) and the WIFIA Lender;
- (d) The Indenture, dated as of January 1, 2009 (as supplemented and amended, the “Indenture”), by and between the Authority and the Trustee;
- (e) The Amended and Restated Master Installment Purchase Agreement, dated as of January 1, 2009 (as supplemented and amended to and including the date hereof, including by the MIPA Amendment (defined below), the “MIPA”), by and between the Borrower and the Corporation;
- (f) The First Amendment to the Amended and Restated Master Installment Purchase Agreement, dated as of November 14, 2018 (the “MIPA Amendment”), by and between the Borrower and the Corporation;
- (g) Ordinance Number O-20993 (New Series) of the City Council of the Borrower having a date of final passage of October 10, 2018 (the “WIFIA Ordinance”) with respect to the WIFIA Loan Agreement, the WIFIA Note, the MIPA Amendment, the Collateral Agency Agreement and related matters;
- (h) Resolution Number FELC-2018-2 of the Board of Directors of the Corporation, adopted October 10, 2018, with respect to the MIPA Amendment, the Collateral Agency Agreement and related matters; and
- (i) Resolution Number FA-2018-9 of the Board of Commissioners of the Authority, adopted September 25, 2018, with respect to the Collateral Agency Agreement and related matters.

The MIPA, the MIPA Amendment, the Collateral Agency Agreement, each Authorizing Ordinance (including the WIFIA Ordinance), each Supplement and each Issuing Instrument (other than the WIFIA Loan Agreement) are collectively referred to herein as the “MIPA Documents.” The WIFIA Loan Agreement, the WIFIA Note, the WIFIA Ordinance and the other MIPA Documents are collectively referred to herein as the “WIFIA Loan Documents.”

In addition to the documents listed above, we have made such other investigations of fact and law, reviewed such other documents, obtained such certificates from public officials and officers of the Borrower, and done such other things as we have determined necessary to render the legal opinions herein. As to relevant factual matters, we have relied upon, among other things, the Borrower's factual representations in its closing certificate. In addition, we have obtained and relied upon those certificates of public officials we considered appropriate.

We have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals and the conformity with originals of all documents submitted to us as copies. To the extent the Borrower's obligations depend on the enforceability of the WIFIA Loan Documents against the other parties to the WIFIA Loan Documents (other than the Corporation and the Authority), we have assumed that the WIFIA Loan Documents are enforceable against such other parties.

On the basis of such examination, our reliance upon the assumptions in this opinion and our consideration of those questions of law we considered relevant, and subject to the limitations and qualifications in this opinion, we are of the opinion that:

1. The Borrower has been duly created and validly exists as a municipal corporation organized and existing under the City Charter duly adopted pursuant to the laws of the State (including the California Constitution, the general municipal election of April 7, 1931 and Chapter 47 of the Laws of 1931 approved by the California Legislature on April 15, 1931), with good right and power to issue the WIFIA Note.
2. The Borrower has the right and power under the laws of the State, including the Charter, to enter into the MIPA Documents, the WIFIA Loan Documents and the WIFIA Note, and each has been duly authorized, executed and delivered by the Borrower, is in full force and effect, and constitutes the legal, valid and binding obligation of the Borrower enforceable against the Borrower in accordance with its respective terms and conditions (subject to the qualifications and limitations hereinafter set forth).
3. The WIFIA Note is (i) secured by the Collateral, (ii) an Obligation entitled to the benefits of an Obligation under the MIPA, (iii) a Subordinated Obligation that is junior in priority to the Parity Obligations and (iv) enforceable (subject to the qualifications and limitations hereinafter set forth) under the laws of the State without any further action by the Borrower or any other Person.
4. The WIFIA Note is enforceable (subject to the qualifications and limitations hereinafter set forth) under the laws of the State without any further action by the

Borrower or any other Person, and the obligations under the WIFIA Note are *pari passu* in right of payment and right of security with all Subordinated Obligations and are senior in right of payment and right of security to all Junior Obligations.

5. The execution and delivery by the Borrower of, and compliance with the provisions of, the WIFIA Loan Agreement, the WIFIA Note, the Collateral Agency Agreement and the MIPA do not (i) violate the federal law of the United States of America or the law of the State or (ii) conflict with or constitute a breach of or default under any other WIFIA Loan Document.
6. The WIFIA Note is secured by the Collateral. The Collateral Agency Agreement creates the valid and binding assignment and pledge of the Collateral to secure the payment of the principal of, interest on, and other amounts payable in respect of, the WIFIA Note, irrespective of whether any party has notice of the pledge and without the need for any physical delivery, recordation, filing or further act. No documents or instruments are required to be recorded or filed for record in any place to establish, or maintain the validity and enforceability of, the pledge of the Collateral to secure the obligations under the WIFIA Note.
7. All actions by the Borrower that are required for the application of System Revenues as required under the MIPA, the Collateral Agency Agreement and the WIFIA Loan Agreement have been duly and lawfully made.
8. The Borrower has complied with all applicable requirements of State law to lawfully pledge the Collateral for the benefit of the WIFIA Lender and to apply the System Revenues as required by the terms of the MIPA, the Collateral Agency Agreement and the WIFIA Loan Agreement.
9. The Borrower is not entitled to claim governmental immunity in any breach of contract action under the MIPA Documents or the other WIFIA Loan Documents.
10. Under the laws of the State, an action may be maintained against the Borrower in respect of, or relating to, the MIPA Documents and the other WIFIA Loan Documents.

Our opinions above are subject to the following qualifications and limitations.

- (a) Our opinions in paragraphs 2, 3 and 4 above as to the enforceability of the MIPA Documents and the other WIFIA Loan Documents are subject to:

- (i) limitations on enforceability under bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting creditors' rights generally (including, without limitation, fraudulent conveyance laws), under general principles of equity, including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing and the possible unavailability of specific performance or injunctive relief, regardless of whether considered in a proceeding in equity or at law, and limitations under certain circumstances on the payment of judgments against local public entities under Article 1 of Chapter 2 of Part 5 of Division 3.6 of Title 1 of the California Government Code (§§ 970-971.2);
 - (ii) public policy considerations, statutes or court decisions that may limit the rights of a party to obtain indemnification against its own negligence, misconduct or unlawful conduct; and
 - (iii) the unenforceability under certain circumstances of provisions imposing liquidated damages or other amounts which may be held by a court to be a penalty or forfeiture.
- (b) We express no opinion as to any provision of the WIFIA Loan Documents requiring written amendments or waivers of the WIFIA Loan Documents insofar as it suggests that oral or other modifications, amendments or waivers could not be effectively agreed upon by the parties or that the doctrine of promissory estoppel might not apply.
- (c) We express no opinion as to the effect of non-compliance by you with any state or federal laws or regulations applicable to the transactions contemplated by the WIFIA Loan Documents because of the nature of your business.
- (d) With respect to our opinions in paragraphs (9) and (10) above, under the California Government Claims Act (Section 810 of the California Government Code, et. Seq.), plaintiffs may be required to present claims to the public entity before commencing a cause of action.

The law covered by this opinion is limited to the federal law of the United States of America and the law of the State of California. We express no opinion as to the laws of any other jurisdiction and, unless otherwise specified, no opinion regarding the statutes, administrative decisions, rules, regulations or requirements of any county, municipality, subdivision or local authority of any jurisdiction.

This opinion is furnished by us as special counsel to the Borrower and may be relied upon by you only in connection with the transactions contemplated by the WIFIA Loan Documents. It may not be used or relied upon by you for any other purpose or by any other person, nor may copies be delivered to any other person, without in each instance our prior written consent; provided that this opinion may be included in any transcript of proceedings prepared in connection with the execution and delivery of the WIFIA Loan Documents. You may, however, deliver a copy of this opinion to (i) your accountants, attorneys, and other professional advisors, (ii) pursuant to an order or legal process of any relevant governmental authority, (iii) to governmental regulatory agencies having jurisdiction over you, (iv) to third parties in connection with their requests submitted under the Freedom of Information Act (5 U.S.C. § 552), provided this opinion is subject to disclosure thereunder unless determined to be exempt from disclosure in accordance with 5 U.S.C. § 552(b), (v) in connection with any legal action to which you are a party arising out of your participation in the Project and (vi) to your permitted assignees in connection with an assignment (or proposed assignment) of your rights under the WIFIA Loan Documents to such assignees, and such assignees may rely on this opinion as if it were addressed and had been delivered to them on the date of this opinion, unless statements in this opinion would be affected by the status of such assignees. This opinion is expressly limited to the matters set forth above, and we render no opinion, whether by implication or otherwise, as to any other matters. We assume no obligation to update or supplement this opinion to reflect any facts or circumstances that arise after the date of this opinion and come to our attention, or any future changes in laws.

Respectfully submitted,

Nixon Peabody LLP